

Before the
Federal Communications Commission
Washington, DC 20554

In the matter of:

Request for Review Related to WCB Appeal
Denial
By the New Jersey Schools Development
Authority

Schools and Libraries Universal
Support Mechanism

CC Docket No. 02-6

**REQUEST FOR REVIEW
BY THE NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY
OF A FUNDING DECISION BY THE
WIRELINE COMPETITION BUREAU**

Pursuant to sections 54.719 and 54.722 of the Commission's rules,¹ the New Jersey Schools Development Authority² (NJSDA) hereby respectfully requests a review of a Wireline Competition Bureau (WCB) decision to deny an NJSDA Request for Review and Waiver.³

The WCB denied the attached Request for Review and/or Waiver in Streamlined Resolution of Requests, with the reason given "Untimely-Filed Appeals or Waiver Requests," citing the *Agra Public Schools Order* and *Bound Brook Order*.

¹ 47 C.F.R. § 54.719(b), (c); 47 C.F.R. § 54.722(a).

² BEN 15218925.

³ The associated FRN is detailed in the background section of this appeal.

However, the *Animas School District 6 Order*⁴ makes clear, the Commission will consider late-filed appeals if “the late-filed appeal would never have been necessary absent an error on the part of USAC.” USAC clearly erred in processing this application, giving only 24 hours to respond to a PIA request, and ignoring a request for an extension. In addition, USAC failed to issue an Intent to Deny. The Commission has consistently waived section 54.720(a) of the Commission’s rules consistent with the precedent set in *Animas School District 6 Order*, for example in DA 12-753, DA 12-1771, DA 12-1998, DA 13-238, DA 13-1383, DA 13-1923, DA15-505, DA 16-860, and DA 17-1217.

Consistent with precedent, the district requests that the Bureau direct USAC to approve funding for FRN 2753677. The Bureau should also grant a waiver of any other rules as necessary to effectuate a grant of this appeal.

Respectfully submitted by:



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February 27, 2019

⁴ *Requests for Review and/or Requests for Waiver of Decisions of the Universal Service Administrator by Animas School District 6 et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 26 FCC Rcd 16903, 16905, para. 4 (WCB 2011)

Before the
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In the matter of:

Request for Review and/or Waiver Related to
USAC Denial of Funding Requests Filed
By the New Jersey Schools Development
Authority

Schools and Libraries Universal
Support Mechanism

CC Docket No. 02-6

**REQUEST FOR REVIEW AND/OR WAIVER
BY THE NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY
OF A FUNDING DECISION BY THE
UNIVERSAL SERVICE ADMINISTRATIVE COMPANY**

Pursuant to sections 54.719 and 54.722 of the Commission's rules,⁵ the New Jersey Schools Development Authority⁶ (NJSDA) hereby respectfully requests a review of a Universal Service Administrative Company (USAC) decision to deny payment of its Funding Year 2015 funding request. For the reasons set forth below, the Wireline Competition Bureau (Bureau) should grant this appeal, and/or any waivers necessary or warranted, and reverse USAC's funding decision.⁷

⁵ 47 C.F.R. § 54.719(b), (c); 47 C.F.R. § 54.722(a).

⁶ BEN 15218925.

⁷ The associated FRN is detailed in the background section of this appeal.

I. Executive Summary

USAC erred in its decision to deny FRN 2753677. The applicant was given 24 hours to produce documents requested by PIA, and an extension request was ignored.

II. Leave to Plead

Consistent with the precedent set in the *Animas School District 6 Order*,⁸ the applicant requests that this appeal be accepted after the normal appeal deadline, because “the late-filed appeal would never have been necessary absent an error on the part of USAC.”

III. Background

Funding Year: 2015
Applicant: New Jersey School Development Authority
BEN: 15218925
Form 471 #: 1014635
FRN: 2753677

The timeline for this funding request:

Date	Description
2/24/14	Applicant filed Form 470 #834670001230204.
3/25/14	NJSDA selected M&S Communications, the only bidder.
5/5/14	NJSDA filed Form 471 #985030.
8/27/14	Funding was denied because all Internal Connections requests were denied.
4/15/15	NJSDA refiled the funding request on Form 471 #1014635
6/25/15	M&S withdraws from the contract. Applicant begins procurement process for new service provider.

⁸ *Requests for Review and/or Requests for Waiver of Decisions of the Universal Service Administrator by Animas School District 6 et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 26 FCC Rcd 16903, 16905, para. 4 (WCB 2011)

10/27/15	USAC requests a copy of the agreement with M&S as well as unit pricing.
10/27/15	Applicant provides pricing information and requests an extension.
11/5/15	Pre-discount amount reduced to \$144,000 (based on new per-student budget caps). Funding denied because no signed contract was received by PIA.

IV. Delay in Application Processing and 24-Hour Deadline Made Response Impossible

During review, PIA requested a contract to substantiate the change in contract expiration date from the FY 2014 Form 471 to the FY 2015 Form 471. (Due to unexpected delays in the construction project, the services in the contract had been delayed.)

After the NJSDA had contracted with M&S, M&S decided to withdraw from the contract. At the time that the FRN went into PIA review, M&S had withdrawn from the contract, but the NJSDA had not yet signed a contract with the new service provider selected, so the NJSDA was not able to provide a contract during PIA review.

Had the application gone into review in a timely manner, the applicant could have shown the M&S contract as proof of the expiration date. The applicant would subsequently have filed an Operational SPIN Change Request after M&S refused to provide service.

The request for the contract was sent on October 27, 2015 with a 24-hour deadline. NJSDA construction projects involve multiple governmental organizations and multiple sub-contractors, and the normal NJSDA contracting procedure has to be changed to fit into the E-Rate procurement process. Creating a new contract within 24 hours was not possible.

V. Extension Request Ignored

The applicant requested an extension of that deadline; PIA did not respond to that request. Had PIA granted the requested extension for time to provide the contract, the revised contract would have been available.

VI. No Notice of Intent to Deny

USAC did not inform the applicant of its intent to deny the FRN.

VII. Conclusion

For the foregoing reasons, the Bureau should direct USAC to approve funding for FRN 2753677. The Bureau should also grant a waiver of any other rules as necessary to effectuate a grant of this appeal.

Respectfully submitted by:



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May 2, 2018

List of Exhibits

- Exhibit A Email from PIA requesting contract
- Exhibit B Email to PIA requesting extension

Exhibit A

From: Blondel, James <James.Blondel@sl.universalservice.org>
Sent: Tuesday, October 27, 2015 12:22 PM
To: 'form471@on-tech.com'; 'Dan Riordan'
Cc: 'Sandy.oneil@doe.state.nj.us'; 'Andrew Yosha'
Subject: App 1014635 NEW JERSEY SCHOOL DEVELOPMENT AUTHORITY
Attachments: FY2015 15 Day Letter App 1014635.docx; FY2015 15 Day Letter App 1028270.docx

Good afternoon,

After reviewing the documents sent in for App 1014635, I would need something to validate the cabling price that has the make/models. i.e. a quote from the vendor. Also in your response to the 28 day waiting period... issue 1, you answered " the contract expiration date had to be extended due to factors beyond the applicants control" We would need something to prove that.

After reviewing the documents sent in for App 1028270, I would need something to validate the cabling price that has the make/models. i.e. a quote from the vendor.

Being that these apps are past the 15 days, I am allowed to an additional 24hours to come up with the remaining information. Your new due date will be 10/28/2015 12:30PM

Thank you.

-James

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Exhibit B

From: Dan Riordan <dan@on-tech.com>
Sent: Tuesday, October 27, 2015 12:47 PM
To: 'Blondel, James'
Cc: 'Andrew Yosha'; 'form471@on-tech.com'
Subject: RE: App 1014635 NEW JERSEY SCHOOL DEVELOPMENT AUTHORITY

James,

I will do what I can to collect the information requested, but is there any way I can get more time? This is the end of BEAR season, the second-busiest time of the year for E-Rate, and I'm personally out of the office. Could we please have a one-week extension?

I will get you the specifications of the bids as soon as I can. However, those documents do not include make and model, and the bid responses are simply a price; the vendor does not provide list of equipment. But the bid documents may have enough detail to meet your needs.

What kind of documentation would you like about the construction delays for these projects? Would a statement from NJSDA suffice? Or something from the general contractor? Would an email explaining the delays be enough?

Thank you,

Dan Riordan
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